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Teamsters Local Union No. 222 v. W. S. Hatch Company, A Utah Corporation : Appellant's Reply To Respondent's Brief

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IN THE SUPREME COURT OF THE STATE OF UTAH

TEAMSTERS LOCAL UNION

NO. 222,

Plaintiff-Appellant,

vs.

Case No.
10948

W. S. HATCH COMPANY,
A UTAH CORPORATION,

Defendant-Respondent.

Appellant's Reply to Respondent's Brief

Appeal from District Court of Davis County
Judge Parley E. Norseth, Presiding

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REPLY TO RESPONDENT'S POINT II

Answering Point II of Appellant's argument, Respondent, in Point II of its Brief, denies that Hatch received any benefit under the contract in October, 1964, and observes that there is no evidence that any benefits were paid to Hatch's employees for October, 1964.

Our reply to this is that the benefits to Hatch are that the company received what it bargained for in the contract, namely, benefits to its employees. The benefits to its employees consisted of the granting to the employees eligibility for health and welfare services to them and their families for claims they submitted for medical and hospital services arising during the month of October, 1964, for which application could be made by the beneficiaries any time within a year following said month. The Trust was responsible for all such claims. This is the benefit appellant speaks of. And bearing that responsibility is no less real to the Trust, nor no less of a benefit to Hatch and its employees, even if there had been no claims made for illnesses suffered during the month of October, 1964. The evidence is that the Trust, with the help of the Occidental Life Insurance Company, stood ready, willing and able to honor its responsibility under the contract covering claims arising from illness during the month of October, 1964. This is enough to prove the benefits of which we speak. Submitting evidence of claims paid by the Trust to employees or their families for sickness in October, 1964, would only be adding to evidence already sufficient on this point. If the evidence in the record were not enough to establish our point, and if evidence that employees and their families were actually paid benefits for October, 1964 illnesses were necessary to establish that "benefits" were received by Hatch in October, 1964, Appellant is certainly able to supply it if the case were remanded to the trial court for further evi-

dence on this point. Such payments for the month of October, 1964, were substantial. We could also show that the payment to Occidental Life Insurance Company by the Trust Fund of moneys from the December 19, 1964 check (Exhibit 4), which made such payments to the employees and their families possible, cannot now be recouped by the Trust Fund from Occidental.

So that the Court may have a ready reference to the evidence showing that the Trust Fund stood ready, willing and able to furnish health and welfare benefits for claims arising out of October, 1964, illnesses, we refer to page 86 of the transcript where Mr. Corbett, the Administrator of the Utah-Idaho Security Trust Fund, testified that all the checks in Exhibit 1 were received by the Trust and placed in its bank account. Then on pages 87 and 88 of the transcript when reference was made to Exhibit 4 (the check paid by Hatch December 19, 1964, in the sum of \$1567.50), Mr. Corbett testified that this check was used by the Trust Fund in the following respects:

(1) It gave Hatch's employees eligibility for health and welfare benefits for the month of October, 1964.

(2) Eligibility in October was for hours worked by the men in September, 1964.

(3) This money or a substantial part of it was paid by the Fund to the Occidental Life Insurance Company, which in turn covered the men for health

and welfare benefits from October 1 to October 31, 1964.

Again on pages 90 and 91, Mr. Boyle on cross examination elicits from Mr. Corbett:

“Q. Mr. Corbett, as I understand your testimony, you testified that the payment shown by defendant’s Exhibit 4 covered October eligibility; is that correct?

A. That is correct.

Q. And that would cover the men who were employed during that period for any disability or any claim they would have against the Fund during the month of October; is that correct?

A. The entire month.”

REPLY TO RESPONDENT’S POINT III

In Respondent’s Point III it is argued that Appellant waived its Point No. III by the way it filed its answer during the pleadings stage of the case. It is true that Appellant’s counsel erred in filing the answer when counsel erroneously admitted that the money was paid to Teamsters Local Union No. 222.

This error, however, was corrected at the pre-trial conference, and the pre-trial order reflects the correction in the statement of the third issue of the case as found in the pre-trial order:

“Is the final payment made by defendant to the *Fund* for all of Hatch’s employees for the

month of Sepetmber of October, 1964." (Our emphasis).

Discussions at the pre-trial conference had to do with whether the final payment (Exhibit 4), the check of December 19, 1964, was for the health and welfare benefits for September or October, 1964. *There was no issue* as to whether the check, Exhibit 4, was paid to the *Teamsters* or the *Fund*. The order simply says *the Fund*. There was no opposition to this phrasing of the issue, and that is the way it stood all through the trial. Furthermore, the trial proceeded on this basic assumption, and it was none other than Respondent itself that produced evidence confirming this basic assumption as appears on pages 64, 65 of the transcript where Mr. Boyle, after showing Mr. Mills Exhibit 4 (the check dated December 19, 1964, in the amount of \$1567.50), asked him to identify it:

"A. This is our check made payable to the Teamsters Pension Trust Fund, dated December 19, 1964, in the amount of \$1567.50.

Q. Now who do you say that was made payable to?

A. Evidently, mistakenly to Teamsters *Pension* Trust Fund.

Q. What account was it deposited to?

A. *Utah-Idaho Teamsters Security Fund*.

Q. Is that in fact a mistake in the way the check was prepared?

A. Yes. Actually that's corrected in their endorsement. They have it paid to the order of

Utah-Idaho Teamsters Security Fund by the Teamsters Pension Trust Fund and they then deposit this in Western Savings and Loan Company with their stamp deposit.

Q. *So it did find its way into the proper fund that we're talking about as covered by Section 2 of the Article XX of plaintiff's Exhibit A?*

A. *That's correct.*

Q. And was that check paid pursuant to the demand which is defendant's proposed Exhibit 3?

A. Yes. It was." (Our emphasis).

Now, Section 2, of Article XX speaks of the Fund in these terms:

*" * * * the company shall contribute to a jointly administered trust fund the sum of \$16.50 per month for each regular employee", etc. (Our emphasis).*

This is the evidence in the record on this point and there is no evidence to the contrary.

REPLY TO RESPONDENT'S POINTS I, II AND III WITH REFERENCE TO THE QUESTION OF UNLAWFUL DEMAND

In Respondent's Points I, II, and III, it speaks of a letter written by Fullmer Latter (Exhibit 3), the last paragraph especially, as the basis of its claim that the December 19, 1964, payment by Hatch was made pursuant to an "unlawful" demand and that "the

payment was not voluntary but made under duress". The last paragraph of the letter is quoted on pages 7 and 8 of Respondent's brief. There can be no question that this letter is the basis of Respondent's claim that the demand for payment was "unlawful" and "made under duress" inasmuch as Mr. Mills so testified. Mr. Boyle, referring to the December 19, 1964 check, asks his own witness, Mr. Mills (Transcript page 65):

"Q. And was that check paid pursuant to the demand which is defendant's proposed Exhibit 3?

A. Yes, it was."

"Q. * * * Did you make it [the payment] pursuant to the demand and threat contained in the last paragraph of Exhibit 3?

A. Very definitely."

We simply ask the Court to read the letter. It speaks for itself. We fail to see any part of it as a possible basis for the idea that it is an "unlawful" demand, or that it constitutes a basis for the charge of "duress".

Respectfully submitted,

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